

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUAN GONZALEZ,

Plaintiff, : 3:18-CV-2254
: (JUDGE MARIANI)

v.

JOHN CHULOCK, et al.,

Defendants.

ORDER

AND NOW, THIS 25th DAY OF JULY, 2023, upon *de novo* review of

Magistrate Judge Martin Carlson's Report and Recommendation ("R&R") (Doc. 95),

Plaintiff's Objections thereto (Docs. 96, 97), and all relevant documents, **IT IS HEREBY**

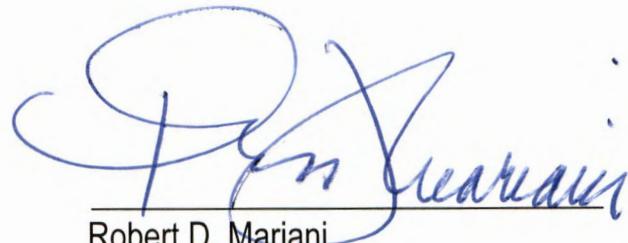
ORDERED THAT:

1. The R&R (Doc. 95) is **ADOPTED** for the reasons set forth therein.
2. Plaintiff's Objections (Docs. 96, 97) are **OVERRULED**.¹

¹ Preliminarily, the Court notes that Plaintiff's Objections repeatedly cite to the allegations set forth in the Complaint, suggest these factual allegations must be taken as true, and frequently rely on the motion to dismiss standard. (See e.g., Doc. 96, ¶¶ 3, 4, 5; Doc. 97, at 1-6, 8). However, Defendants' motion is one for summary judgment, and thus Plaintiff's assertions that Judge Carlson erred in not crediting certain factual allegations set forth in the Complaint are without merit. Regardless, as Judge Carlson properly acknowledged after review of the Defendants' statement of material facts and Plaintiff's response, "[w]hile in many instances [the parties'] competing factual narratives would preclude a summary judgment disposition of this case, there has been a supervening change in the law which . . . renders these factual disputes largely meaningless." (Doc. 95, at 4).

Here, Plaintiff's substantive Objections are copied verbatim from the portion of his brief in opposition to summary judgment addressing Defendants' *Bivens* and *Egbert* argument. (Compare Doc. 93, at 18-23 and Doc. 97, at 8-13). Judge Carlson's R&R correctly rejected Plaintiff's arguments by thoroughly addressing *Bivens*, its progeny, and the effect of the Supreme Court's recent decision in *Egbert*. The Court agrees with both the R&R's recitation of the law and its application of the law to the facts and legal claims in

3. The Motion for Summary Judgment (Doc. 85), filed by Defendants David Clark, Stephen Carlo, and Paul Wiss, is **GRANTED**.
4. The action is **REMANDED** to Magistrate Judge Carlson for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge

this case. As Judge Carlson noted, this Court "join[s] a rising tide of case law which has followed *Egbert* and have held that efforts to imply a *Bivens* claim related to immigration enforcement entail a 'new context'" and, further, that have found "the work of immigration agents, who conduct specialized enforcement duties under the Immigration and Nationality Act relating to both immigration enforcement and national security, entails a host of 'special factors' which counsel strongly against any extension of *Bivens*." (Doc. 95, at 15-16) (collecting cases); see also, *Bissereth v. United States*, 2023 WL 4373888 (D.Mass. July 6, 2023)).

Finally, upon review of Plaintiff's Objections to the R&R, it is evident that Plaintiff's arguments largely consist of policy disagreements with the structure and authority of ICE, including its "administrative oversight mechanisms", as well as veiled disagreement with the Supreme Court's decision in *Egbert*. Nonetheless, this Court is bound by the lengthy precedent addressing the application of *Bivens*, and the Supreme Court's most recent addition to this issue in *Egbert*. Mindful of its obligation to apply the higher court's precedent and to avoid infringing on Congress's power and authority, the Court will overrule Plaintiff's Objections.